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January 28, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 16, 2008

Case Number: TSO-0679

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") to have his access authorization restored.<sup>1</sup> After reviewing the testimony and evidence presented in this matter, it is my decision that the Individual's access authorization should not be restored.<sup>2</sup>

**I. APPLICABLE REGULATIONS**

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the Department of Energy (DOE) may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

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<sup>1</sup> Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

## II. BACKGROUND

The Individual is an employee at a DOE facility. In September 1975, the Individual was granted a security clearance. During the period December 1975 through December 1976, the Individual smoked marijuana three times. Again, during the period 1979 thru 1981, the Individual smoked marijuana once or twice. In 2001, the Individual “tasted” marijuana residue in a pipe. In a Personnel Security Questionnaire (PSQ) completed in August 1985 and in Questionnaires for National Security Positions (QNSPs) completed in July 1996 and May 2002, the Individual denied using illegal drugs. In November 2007, the Individual completed a QNSP in which he stated that he had only used marijuana three times from December 1975 through December 1976.

As part of the process to receive another clearance from another agency, the Individual underwent a polygraph examination. When asked about illegal drugs, the Individual denied any involvement. The polygraph indicated that this was a possibly deceptive answer. The Individual then revealed to the examiner his prior drug usage. A report concerning the results of the examination was sent to the local security office in March 2008. To resolve the issues raised by the Individual’s admitted illegal drug use and apparent falsification regarding several QNSPs, the LSO conducted a personnel security interview (PSI) with the Individual in June 2008 (6/08 PSI). In the PSI, the Individual admitted his use of marijuana and that he deliberately hid his use of marijuana from the DOE.

Because the PSI failed to resolve the derogatory information, the Individual’s security clearance was suspended. The LSO sought administrative review of this matter and issued a notification letter (Notification Letter) to the Individual on August 5, 2008. In the Notification Letter, the Individual was informed that he had falsified his answers regarding his illegal drug use in QNSPs dated July 1996, May 2002, and November 2007. Additionally, the Individual had falsely stated that he had no involvement with illegal drugs in the August 1985 Personnel Security Questionnaire. This information constituted derogatory information under 10 C.F.R. § 710.8(f) (Criterion F). The Notification Letter also cited the Individual’s admitted use of marijuana as derogatory information under 10 C.F.R. § 710.8(k) (Criterion K). As derogatory information under 10 C.F.R. § 710.8(l) (Criterion L), the Notification Letter cited the Individual’s attempt to provide a false answer in the polygraph examination and his use of marijuana while holding a security clearance. Also cited as Criterion L derogatory information was the fact that the Individual had used marijuana despite having signed a number of security acknowledgment forms certifying that involvement with illegal drugs could result in the loss of his security clearance. Additionally, the Individual had provided false answers in three QNSPs despite having signed three letters of instruction from the DOE certifying his knowledge that falsifying a QNSP could result in the revocation of his security clearance.<sup>3</sup>

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<sup>3</sup> Criterion F refers to derogatory information that indicates that an individual “deliberately misrepresented, falsified, or omitted significant information from . . . a Questionnaire for Sensitive (or National Security) Positions, [or] . . . a personnel security interview, . . . made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization.” 10 C.F.R. § 710.8(f). Criterion K refers to information indicating that an individual has “[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances . . . (such as marijuana, cocaine, amphetamines,

A hearing was held in this matter. At the hearing, DOE did not present any witnesses. The Individual offered his own testimony, as well as that of seven other witnesses – two of his managers (Manager 1 and Manager 2), a friend, a neighbor, a mentee, a co-worker (Co-Worker 1) and a business partner. The DOE submitted 29 exhibits (Exs. 1-29) for the record. The Individual submitted 20 exhibits (Ind. Exs. A-S) which include sworn declarations from two other co-workers (Co-Workers 2 and 3), a licensed counselor and his spouse.

### **III. FACTUAL FINDINGS**

The facts in this case are essentially not in dispute. A brief summary is provided below.

The Individual has been employed by the DOE since September 1975. DOE Exhibit (Ex.) 20 at 7. In that month, the Individual was also granted a security clearance. Ex. 4 at 2. During the period 1971 to 1976, the Individual used marijuana approximately 3 times a year. Ex. 2 at 5-6; Tr. at 260.<sup>4</sup> After a period of abstinence, the Individual smoked marijuana on two occasions during the period 1979 to 1981. Hearing Transcript (Tr.) at 232; Ex. 2 at 5-6.

The Individual was asked to complete a Personnel Security Questionnaire in August 1985 (8/85 PSQ). In the 8/85 PSQ the Individual answered “No” when asked had he ever been a user of any illegal drugs, including marijuana. Ex. 25 at 3.

In May 1991, the Individual completed a Questionnaire for National Security Positions (5/91 QNSP). The Individual also signed a letter of instruction in which he certified that he understood that falsifying a QNSP could result in the loss of a security clearance. Ex. 19 (5/91 letter of instruction).

As part of a reinvestigation, the Individual was asked to complete another QNSP in July 1996 (7/96 QNSP). In the 7/96 QNSP the Individual answered “No” to a question asking if he had ever used a controlled substance while possessing a security clearance. Ex. 23 at 4. The Individual at this time also signed a security acknowledgment form certifying he understood that involvement with any illegal drug could result in the loss of his security clearance. Ex. 16 (July 1996 security acknowledgment form). Additionally, he signed another letter of instruction. Ex. 18 (July 1996 letter of instruction).

In 1999, the Individual smoked marijuana twice during a one-week period. Tr. at 233. The marijuana was provided by a woman whom he was dating at the time. Ex. 2 at 6.

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barbiturates, narcotics, etc.).” 10 C.F.R. § 710.8(k). Criterion L references information indicating that an individual is “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy. . . .” 10 C.F.R. § 710.8(l).

<sup>4</sup> At the hearing, the individual testified that during this period of time he smoked marijuana approximately three or four times in 1971 and then for the remainder of the period 1972 to 1976 smoked marijuana “maybe once a year.” Transcript of Hearing (Tr.) at 202. Later, the Individual testified that in 1976 he smoked marijuana on three occasions. Tr. at 260.

In 2002, the Individual, while cleaning a rental property, discovered a pipe belonging to the former tenant. The Individual tasted the pipe residue in order to determine if the tenant had been smoking marijuana. Ex. 2 at 6; Ex. 28 at 32; Tr. at 274.

The Individual, as part of a reinvestigation, completed another QNSP in May 2002 (5/02 QNSP). In this QNSP, the Individual again answered “No” to a question asking if he had ever used a controlled substance while possessing a security clearance. Ex. 21 at 8. He also answered “No” to a question asking if he had used an illegal drug within seven years of the date of the QNSP. Ex. 21 at 8. The Individual also signed another security acknowledgment form and letter of instruction. Ex. 15, 17 (May 2002 security acknowledgment form and May 2002 letter of instruction respectively).

In July 2007, as part of the process for obtaining a security clearance from another federal agency the Individual underwent a polygraph examination. Ex. 2 at 6; Ex. 3 at 3. During this examination, the polygraph indicated that the Individual was providing deceptive answers with regard to question dealing with illegal drug usage. The Individual then admitted to the examiner that he had used marijuana while holding a security clearance. Ex. 28 at 27. He also stated to the examiner that he had last used marijuana in 1981. Ex. 28 at 28-29.

In November 2007, the Individual completed a QNSP (11/07 QNSP).<sup>5</sup> In this QNSP, the Individual answered “No” to a question asking if he had used marijuana within seven years of the date of the QNSP. Ex. 20 at 25. The Individual did answer “Yes” to a question which asked if he had ever used marijuana while holding a security clearance. Ex. 20 at 25. In describing the extent of his marijuana usage in this QNSP, the Individual stated that he had used marijuana three times during the approximate period of December 1975 through December 1976. Ex. 20 at 25. The Individual also executed another security acknowledgment form. Ex. 14.

The Local Security Office (LSO) received a report in March 2008 regarding the polygraph examination of the Individual. This prompted the LSO to conduct the 6/08 PSI with the Individual. In this interview, he admitted that he had deliberately hid his prior drug use while holding a DOE security clearance and that he made false statements in the clearance process regarding his illegal drug use. Ex. 28 at 38-39. By way of explanation, he stated that he wished to “push this problem . . . into the past” and that his attempt to hide this information was “misguided.” Ex. 28 at 53, 59. His initial failure to report his illegal drug use was motivated by his fear that such a revelation would affect his ability to be granted a security clearance. Ex. 28 at 36. He was also concerned about causing “unnecessary grief” for his family if he failed to gain the security clearance and employment at the DOE facility. Ex. 28 at 36-37. Further, the Individual admitted that when he was granted his security clearance, he was aware that DOE had a “no drug use policy.” Ex. 28 at 39.

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<sup>5</sup> The form the Individual completed in November 2007 is actually entitled Electronic Questionnaire for Investigations Processing. Because it contains the same questions as a QNSP, I will refer to it as the 11/07 QNSP.

#### IV. ANALYSIS

##### A. Criterion F

The concerns raised by the Criterion F derogatory information regarding the Individual's failure to reveal his prior use of marijuana, and the exact extent of his use, are well substantiated in the record. Consequently the LSO had more than sufficient evidence to support invoking this Criterion.

I have summarized the alleged falsifications in the table below:

<u>Document</u>	<u>Alleged Falsification</u>
8/85 PSQ	Answered "No" to question regarding illegal drug use
7/96 QNSP	Answered "No" to a question asking if he had ever used illegal drugs while holding a security clearance
5/02 QNSP	Answered "No" to a question asking if he had used an illegal drug within seven years of the date of the QNSP  Answered "No" to a question asking if he had used an illegal drug while holding a security clearance
11/07 QNSP	Answered "No" to a question asking if he had used an illegal drug within seven years of the date of the QNSP  Omitted to record his use of marijuana between 1979 and 1981 as well as his "tasting" of marijuana residue in 2002 <sup>6</sup>

At the hearing, the Individual challenged the LSO's assertion that his answers in the 8/85 PSQ and the 11/07 QNSP were in fact falsifications. The Individual testified that with regard to the

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<sup>6</sup> The Individual originally remembered the incident as occurring in 2001. However, he discovered a receipt from an heating unit repair made to the rental property which occurred at the time of his cleaning of the rental unit. The receipt indicated the date of the repair as November 2002. See Ind. Ex. E (Spouse's sworn declaration concerning the incident and receipt for work); Ind. Ex. T at 1 n.1.

8/85 PSQ, the question asked if he had been a “user of illegal drugs” and, that given his very sporadic use of marijuana several years in the past, he did not in fact qualify as an “user of illegal drugs.” Tr. at 203; *See* Ind. Ex. O. The Individual also testified that there was no written guidance regarding the language used in the PSQ or other letter of instruction as to the form. Consequently, he convinced himself that his answer was not a falsehood. Tr. at 203, 206-07.

The Individual also challenges the allegation that he falsified answers in the 11/07 QNSP. As to the question asking if he had used an illegal drug within seven years of the date of the QNSP, he believed that his tasting of marijuana residue in 2002 was not relevant or material and should not be considered “usage.” Tr. at 199, 275. He was influenced in this regard by his conversation with the July 2007 polygraph examiner in which the examiner stated that the tasting incident was irrelevant to the examination and that he was only interested in events where the Individual sought to get “high.” Tr. at 275. Additionally, the Individual asserted that his failure to record two periods of marijuana usage in the 11/07 QNSP is not a falsification but an “omission.” Tr. at 216; *see* Ind. Ex. O. As for the rest of the allegations contained in the Notification Letter, the Individual admits providing false information regarding his marijuana usage or failing to provide complete information. Tr. at 203-04.

After considering the evidence in the record I conclude that the Individual’s answer regarding illegal drug use in the 8/85 PSQ was a falsification. The question in that form (Question No. 11.A) specifically asks “Are you now, or have you been, a user of any narcotic, hallucinogen, stimulant, depressant, or cannabis (to include marijuana and/or hashish) except as prescribed by a licensed physician?” Ex. 25 at 3. The Individual answered “No” to this question. Given the plain language of the question asking about prior use (“have you been”) and the Individual’s prior use of marijuana through the period 1971-76, the Individual’s negative answer is false.

With regard to the 11/07 QNSP, I find that the Individual could have reasonably answered “No” to the question about illegal drug use in the past seven years. Question No. 24a asks “. . . . in the last 7 years have you illegally used any controlled substance, for example, marijuana . . . ?” Ex. 20 at 31. Whether the Individual provided a false answer to this question with regard to his 2002 involvement with tasting marijuana ash residue is dependent on the meaning of the word “used.” The definition of the word “use” (the present tense of the verb “used”) is given in Black’s Law Dictionary as “[t]he application or employment of something.” Black’s Law Dictionary 7<sup>th</sup> ed. at 1540. Individual testified that he tasted the residue of a pipe he found at a rental property to determine whether the prior tenant had been using marijuana and not to obtain a behavioral effect (“high”). Tr. at 199-200, 234-35. This testimony is supported by his spouse’s sworn statement regarding the events of the day that led to the discovery of the pipe. Ind. Ex. E. Because the Individual did not taste the pipe residue to obtain a behavioral effect, the ordinary purpose for which most individuals use marijuana, I find that the Individual had no intent to provide a false answer to Question No. 24a of the QNSP. *Cf. Industrial Security Program*, ISCR Case No. 03-15854 (2003) (Defense Office of Hearings and Appeals Administrative Judge in security clearance case found that applicant did not have intent to deceive interviewer about

marijuana use when she neglected to disclose incident with marijuana where individual only tasted ash residue in marijuana bowl).<sup>7</sup>

Nevertheless, the Individual has provided false information in the 8/85 QSP, 7/96 QNSP and 5/02 QNSP regarding his use of marijuana and his use of marijuana while possessing a security clearance. This pattern of falsification is significant and long-standing. The Individual presented a number of witnesses and sworn statements from others as well as his own testimony in an attempt to mitigate concerns raised by his falsifications.

The Individual testified that, because of the problems that have arisen from his failure to be candid concerning his marijuana use, he has undertaken significant introspection in order to determine what deficiencies in character has led him to exhibit poor judgment. Tr. at 255. This introspection has led him to consult trusted friends as well as a relationship counselor. Tr. at 255; *see* Ind. Ex. R. His introspection has led him to believe that he “pay[s] far too much attention to gaining other people’s approval . . . and this goes . . . for DOE.” Tr. at 226. Additionally, he found that he lacks empathy in some areas of his life including being able to perceive how others would feel about his falsifications. Tr. at 227. As a result of this process, he believes that he has an improved understanding of himself and is confident that such a lapse in judgment will not occur again. Tr. at 255.

With regard to his use of marijuana in 1976 while holding a security clearance, the Individual testified that while he knew use of marijuana was against DOE policy, he convinced himself that his use was “victimless” and that he believed that there was little chance that of use would be discovered. Tr. at 230-31.

The Individual also testified as to the circumstances surrounding his misrepresentation to the polygraph examiner. When the Individual was being considered for another security clearance with another agency, he was asked to take a polygraph examination. Tr. at 217. The Individual decided that this would be an appropriate time to reveal to the agency and the DOE his prior use of marijuana. Tr. at 217. Then the Individual “lost his resolve.” Tr. at 217. The Individual described two motivations for providing false information to the polygraph examiner. First, he thought there was a chance that the questions he might be asked during this examination might not require him to provide a false answer. Tr. at 220. Lastly, he had a “scientific curiosity as to whether I could lie my way through a polygraph . . .” Tr. at 221. At the time, he believed that he could “sail through any polygraph.” Tr. at 221. He is now very embarrassed to have held these beliefs. Tr. at 220.

The Individual presented seven witnesses who testified concerning the Individual’s honesty. In the case of four of the witnesses, Manager 1, his Friend, his Neighbor and Co-Worker 1, each has known the Individual for more than 20 years. Tr. at 14, 35, 62, 143. The other witnesses, Manager 2, a Mentee, and his Business Partner, have known the Individual for various periods of time ranging from 8 to 15 years. Tr. at 86, 126, 168. Each of the witnesses, many of whom have worked extensively with the Individual at the DOE facility, had been shown a copy of the

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<sup>7</sup> The Defense Office of Hearings and Appeals decision may be accessed at [www.dod.mil/dodgc/doha/industrial/03-15854.h1.html](http://www.dod.mil/dodgc/doha/industrial/03-15854.h1.html).

Notification Letter or otherwise informed by the Individual as to the nature of the derogatory information described in the Notification Letter. Each of the witnesses testified as to his excellent opinion as to Individual's honesty. Typical of the testimony in support of the Individual's honesty was testimony such as "You're [the Individual is] a very honest person . . . .", "I think you're [the Individual] sort of a Boy Scout and a straight arrow", "I've always thought you were an honest trustworthy individual." Tr. at 176 (Business Partner), 66 (Neighbor), 131 (Mentee). The Individual's Business Partner testified as to the Individual's concern that all of their firm's technology transfers from the DOE facility were proper and that their firm avoided even the appearance of a conflict of interest. Tr. at 179-80. All testified to the Individual's dedicated observance of security regulations. *See, e.g.*, Tr. at 17, 43, 98-99, 129-30, 151-52, 172-73 (Manager 1, Friend, Manager 2, Mentee, Co-Worker 1, Business Partner, respectively).

Additionally, the Individual submitted sworn declarations from two other co-workers and his counselor. Co-Workers 2 and 3 have known the Individual for 15 and 28 years, respectively. Ind. Ex. P and Q. Both strongly affirm the Individual's honesty and character. The Counselor worked with the Individual in couples therapy during several years in the late 1990's. He saw the Individual professionally in November 2008 so that the Individual could better understand the personal issues that led to his past marijuana use and his decision to hide his involvement. Ex. R. The Counselor states in his declaration that "it has been my experience that [the Individual] is a man of honesty and integrity." Ind. Ex. R.

In a written submission, the Individual has summarized the various facts he believes mitigate the falsifications described in the Notification Letter. Ind. Ex. T. These mitigating factors are listed below:

1. He voluntarily elected to undergo the polygraph examination in July 2007 with an intention to disclose all of the information that had been improperly withheld;
2. He accurately answered questions on the 11/07 QNSP regarding use of marijuana, although he omitted two periods of use in 1979-81 and 1999;
3. He voluntarily revealed that he had used marijuana twice in 1999 in his request for a hearing despite the fact this use had not been cited in the Notification Letter or disclosed in the 6/08 PSI;
4. Despite his attempt to mislead the polygraph examination, he was still granted a security clearance by the sponsoring agency;
5. He sincerely regrets the falsification in the 7/96 QNSP, 5/02 QNSP and the omissions in his 11/07 QNSP; and,
6. He has undertaken a period of serious introspection as to deficiencies of character that led him to be susceptible to the poor judgment that resulted in the falsifications. His efforts have resulted in an improved understanding of himself and confidence that such incidents will not happen again.



7. The false answers and omissions are connected to a “single, very narrow aspect” of his life. An analysis of his entire life would show that all other aspects of his life are beyond reproach, i.e., no criminal or alcohol incidents, financial irresponsibility, or high-risk behaviors.

Cases involving verified falsifications are difficult to resolve because there are neither experts to opine on what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the falsification and the individual’s subsequent history in order to assess whether the individual can be considered rehabilitated from his or her falsehoods and whether restoring the individual’s security clearance would pose a threat to national security. *See, e.g., Personnel Security Hearing*, Case No. TSO-0140 (2004). After reviewing the facts of this case, I must conclude that the Individual has failed to mitigate the concerns raised by his admitted falsifications.

The Individual has demonstrated a very recent history of falsification and omission. Specifically, the Individual tried to deceive a polygraph examiner in July 2007 as to his use of marijuana. Further, the Individual omitted information in a December 2007 QNSP regarding his history of marijuana use. At the hearing, the Individual admitted during the June 2008 PSI that he “effectively lied” when he answered that his last use of marijuana occurred in 1976. Tr. at 263; *see* Ex. 28 at 15. In explaining his response, the Individual testified

As stated in the -- elsewhere in this personnel security interview, my erroneous thinking was to make myself look better by pushing my marijuana use further in the past, then even I could justify my -- I could better justify immaturity of judgment on my part.

Tr. at 264.

The Individual’s duration of perpetuating his falsification is significant. He denied his illegal drug use in 1985 (8/85 QSP) and did not reveal his prior marijuana use to DOE until 2007 (11/07 QNSP), almost 12 years later. The Individual did not reveal his prior drug use until he was motivated to confess by virtue of the detection of a false answer during the polygraph examination in July 2007. His history of honesty regarding his prior marijuana use is relatively brief, less than one year.

Against this factual background, I find that none of the factors asserted by the Individual mitigates the concerns raised by his extensive and prolonged history of falsification. The fact that he intended to reveal his prior use at the polygraph examination counts for little weight, especially since at the examination he attempted to provide false answers concerning his use of illegal drugs. Further, the fact that he did not provide a false assertive answer in the 11/07 QNSP does not excuse his omission of other periods of marijuana use. Even if I were to adopt the Individual’s contention that he had not falsified any items in the 11/07 PSI, that fact provides only an isolated incident of candor. I also give little weight to the fact that he revealed his use of marijuana in 1999 in his request for a hearing in this matter. By the time of this disclosure, the

Individual's security clearance had already been suspended and consequently, the Individual had a significant external motivation to be candid.

The fact that the Individual was, despite his attempt at falsification, granted a security clearance by another agency, does not provide any mitigation in this matter. Another agency's determination of fitness for a security clearance is not binding on the DOE and it may reflect a different assessment of risk than that deemed appropriate for DOE. I do find that his regret for the falsification and his serious attempt at self examination provides some mitigation for his falsifications. I believe that the Individual is on the path to a fundamental change regarding his ability to be completely honest about all phases of his life. However, given the extensive nature of his history of falsification and the fact that he has recently falsified information, I do not find that these factors sufficiently mitigate the security concerns raised by his conduct. Lastly, I do not find that the fact that his falsification was restricted to a "narrow" part of his life to be a mitigating factor. As a number of Hearing Officers have found, the DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing*, Case No. VSO-0448 (2001). Further, the fact that a person may have many outstanding features to his or her character, excellent work performance, and scrupulous adherence to security regulations, does not eliminate the security risk that falsification creates. The risk remains that such a person, once having lied to DOE, may lie in the future when presented with a difficult circumstance.

In sum, I find that the Individual has not resolved the security concerns raised by his admitted falsifications.

## **B. Criterion K**

The concerns raised by the Criterion K derogatory information arise from the Individual's admitted prior use of marijuana. Given the Individual's self reporting of prior marijuana use, the LSO had more than sufficient evidence to support invoking this Criterion.

At the hearing, the Individual testified that his marijuana use began while attending college. Tr. at 227. His use during the period 1971 to 1976 was primarily with his friends. Tr. at 229. The Individual testified that since being granted a clearance, he has smoked marijuana on seven occasions – three times in 1976, two times during 1979-1981 and two times within one week in 1999. Tr. at 260-61. During 1976, he smoked marijuana with his then wife. Tr. at 231-32. His use of marijuana in the 1979 time frame occurred at a time of transition in his life. He had lost a child from sudden infant death syndrome and had recently been divorced. Tr. at 231. During this period, he remembers smoking marijuana once with a friend of his ex-wife and once with a cousin. Tr. at 232. The Individual testified that his use in 1999 was while his life was again in transition after a second divorce. Tr. at 233. He had just met a woman via a dating service and smoked marijuana twice while on two dates with the woman. Tr. at 233. Since smoking marijuana was illegal and against DOE policy, he decided to end his relationship with the woman. Tr. at 233. He further testified that his intention is to never use marijuana or any other illegal drug. Tr. at 250.

When asked at the hearing, five of the witnesses answered that they had no reason to believe that the Individual had ever used marijuana. Tr. at 57, 66, 100, 147, 175 (Friend, Neighbor, Manager 2, Co-Worker 1 and Business Partner, respectively).

After examining the record, I find that the security concerns raised by the Individual's past marijuana use under Criterion K have been resolved. Despite the previous denials, I find the Individual's current testimony to be credible as to his past marijuana usage. Support for the Individual's testimony regarding his relative limited use of marijuana is provided by the testimony of the Neighbor who has known the Individual since 1986. Tr. at 71. The Neighbor, who lived next door to the Individual, had significant weekly contact with the Individual at home by building a boat with him during the weekends as well as the fact that the neighbor's daughter babysat the Individual's children. Tr. at 63-66. While his visits to the Individual's house have lessened since 1999, the neighbor has not seen any evidence that the Individual has been involved with illegal drugs. Tr. at 74. Co-Worker 1 testified that, in all of the social events in which he has participated with the Individual, he has seen no evidence of any illegal drug usage or impaired judgment. Tr. at 162. In his sworn statement, the Individual's Counselor stated that he has no evidence that would lead him to conclude that the Individual has any type of drug problem. Ex. R. Further, some support is provided by the fact that none of the background checks performed on the Individual during his career found evidence of significant illegal drug use. *Cf. Personnel Security Hearing*, Case No. TSO-0658 (2008), *slip op.* at 3 n. 4 (Hearing Officer use of a negative OPM report of investigation as support of individual's veracity with regard to past illegal drug usage).

The vast majority of the Individual's infrequent use of marijuana occurred in 1971 through 1981, at least 27 years ago. The Individual's last use of marijuana (twice) occurred in 1999.<sup>8</sup> Further, I believe that the Individual will not use marijuana in the future. The Individual's two most recent use occurred during 1979-1981 and 1999, when the Individual was experiencing great turmoil in his life with the loss of a child and two divorces. Since then, the Individual has undertaken serious efforts to understand why he made a bad choice to use marijuana and has stated his intention never to have any involvement with illegal drugs. Given all of these facts, the Individual's very sporadic use of marijuana, and the fact that his last use of marijuana occurred some nine years ago, I find that the Criterion K concerns arising from his past marijuana use have been resolved.

### **C. Criterion L**

The Criterion L concerns center on the Individual providing false information in the July 2007 polygraph examination, his use of marijuana while holding a DOE security clearance and being aware of DOE's policy against the use of illegal drugs, and his use of marijuana after having executed several Security Acknowledgment forms affirming that his knowledge that providing

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<sup>8</sup> In making this finding I have not considered the "taste" incident in 2002 as a use or possession of marijuana for Criterion K purposes. The involvement with marijuana in the "taste" incident was *de minimus* and did not involve ingestion of marijuana to produce a behavioral effect. Nor did the Individual actively seek to possess marijuana ash residue on this occasion. After the Individual tasted the marijuana ash residue, the Individual's spouse immediately disposed of the pipe containing the residue. Tr. at 235; Ex. E (sworn statement of Individual's spouse concerning disposal of pipe).

false information could result in the revocation of his security clearance. The Individual has not challenged these facts. The Individual's actions in these incidents clearly show a lack of honesty, reliability and trustworthiness, and as such, provides sufficient ground for the LSO's invocation of Criteria L.

To mitigate the security concerns raised by the Criterion L derogatory information, the Individual, as discussed earlier, presented a number of witnesses to testify as to his honesty, trustworthiness and reliability. All of the witnesses spoke highly of the Individual's integrity and honesty. *See, e.g.*, Tr. at 17, 42, 67, 100, 148, 176 (Manager 1, Friend, Neighbor, Manager 2, Co-worker and Business Partner, respectively). Almost all spoke not just of the Individual's own dedication to obeying security rules at work but his dedication in teaching interns and other employees of the need for rigid adherence to security regulations. *See, e.g.*, Tr. at 19, 44, 93-97, 129, 145-56, 172-77 (Manager 1, Friend, Manager 2, Mentee, Co-Worker and Business Partner, respectively). The Individual's Friend also testified as to the Individual's extensive activities in the church they both attend as well as the Individual's activities as a merit badge counselor in a local Boy Scout Troop. Tr. at 39-40. The Friend testified as to his belief that the Individual presented a "moral figure that it would be a good example to follow" and that he met all scouting goals for leading young men. Tr. at 40. The Individual has also submitted evidence of a number of awards he has earned as a result of his work accomplishments. Ind. Exs. I, J, K and L.

Because Criterion L covers derogatory information that would furnish a reason to believe that a person could be subject to pressure to act in a way contrary to the national interest, the Individual has submitted a list of all the significant people in his life at work and socially that he has informed of his prior marijuana use and his attempt to hide this fact from the DOE. Ind. Ex. S.

At the hearing, the Individual argued that the following three factors have mitigated the security concerns raised by the Criterion L derogatory information. First, the Individual has demonstrated extreme fidelity in fulfilling his security responsibilities over 33 years of employment at his DOE facility. Second, he has provided substantial testimonial evidence that he is honest, reliable and trustworthy in all aspects of his life apart from the falsifications in the 1996 and 2002 QNSPs. Lastly, he has revealed his misconduct to family members, friends, colleagues and management so that his marijuana use and his falsifications could not be used as a basis for coercion. *See generally*, Ind. Ex. T.

After reviewing all of the evidence, I can not find that the Individual has resolved all of the concerns raised by the Criterion L information. The security concerns arising from the Criterion L derogatory information involve the Individual's falsifying answers regarding his prior marijuana use in two QNSPs, providing false answers in QNSPs despite signing Security Acknowledgments certifying his knowledge that deliberately falsifying a QNSP could result in revocation of his security clearance, using marijuana while he was aware of DOE policy against such use, and using marijuana on several occasions while holding a security clearance. The most serious of these concerns arise from the Individual's failure to be honest concerning his past drug use. As of the date of the hearing, I believe that the Individual has finally given a full and complete accounting of his past marijuana usage, but this is only a relatively recent event. As of July 2007, the Individual tried to mislead a polygraph examiner about his drug use. In his June 2008 PSI, he again provided false answers. As discussed earlier in the Criterion F section, given

the extent and duration of his falsifications, I cannot, as of the date of this decision, find that he can be reliably counted on to provide honest answers to security-related concerns in the future, especially if the Individual encounters a difficult situation. Further, the Individual's reliability is brought into serious doubt by his use of marijuana while possessing a security clearance. These conclusions are not mitigated by the fact that it is unlikely that the Individual's past marijuana use could be used to coerce the Individual or that the Individual has, to his credit, not used the security clearance granted by the other agency. The testimony provided in this case indicates that the Individual is a brilliant professional, who has made "significant" and "breakthrough" contributions at the DOE facility, has faithfully followed DOE security regulations at work and is trusted by his colleagues. *See* Tr. at 18-19 (describing nature of Individual's technical accomplishments). Nevertheless, security clearance holders are called to be completely open with regard to *all* the events of their lives and to be reliable enough to honor *all* security commitments. The Individual has only recently internalized this necessity. Consequently, I can not find that as the date of this hearing the Individual has resolved the security concerns raised by the Criterion L derogatory information.

## V. CONCLUSION

As explained above, I find that the security concerns under Criterion K related to the Individual's use of marijuana have been resolved. However, I find that the security concerns under Criteria F and L relating to the Individual's failure to provide accurate information on a PSQ, several QNSPs, a PSI and a polygraph examination, as well as his use of marijuana while possessing a security clearance have not been resolved. I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: January 28, 2009

